

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 417 of 1980

with

SECOND APPEALS No 418, 419 AND 420 of 1980

Date of decision: 5-10-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NARENDRASINHJI N VADHER

Versus

DALWADI LAXMAN MULJI  
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Appearance:

1. Second Appeal No. 417 of 1980  
MR PV HATHI for Petitioners  
MR SURESH M SHAH for Respondent No. 1

2. Second Appeal No 418 of 1980  
MR PV HATHI for Petitioners  
None present for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/10/98

ORAL JUDGEMENT

In all these four appeals common questions of facts and law arise. All the four civil suits were decided by the trial court by common judgment, and the first appeals filed against the judgment of the trial court were also disposed of by common judgment of the first appellate court. Therefore these second appeals are taken up together and are being disposed of by this common judgment.

2. In these appeals the appellants are common. The plaintiffs who are common in all the four civil suits have come up with the case that one Jasubha Jesangji was their uncle's son, who died in the year 1954-55 leaving behind his widow named Dhirajba Hamirji. On the death of Jasubha Jesangji, Dhirajba inherited certain properties of her husband and maintained the same. Dhirajba died on 24th September, 1962. The plaintiffs, considering themselves to be close heirs of deceased Jasubha Jesangji applied for grant of heirship certificate before the Competent Civil Court. The Civil Court granted certificate in their favour for the property of deceased Jasubha Jesangji. It is the further case of the plaintiffs that they came to know subsequently that some properties were illegally sold to the defendant No.1 in the four suits by defendant No.2 therein. It is the case of the plaintiffs that they served notice to the defendants contending the sale to be invalid and called upon them to deliver vacant possession of the suit land. Since the respondents failed to deliver possession, the plaintiffs have filed the four civil suits against the purchasers of the land for recovery of possession of the suit land.

3. All the four purchasers contested the suit . Common defence was raised that they have validly purchased the suit land from the lady Dhirajba through her power of attorney holder - defendant No.2. Defendant No.2 has also put up his defence in the suits. He has

come up with the plea that he was power of attorney holder of Dhirajba; that he has no personal interest in the properties; and he has unnecessarily been joined as defendant in the suits. It is the case of defendant No.2 that whatever actions he has taken in connection with the properties of the lady, including the sale deeds which are subject matter of these four suits, were taken in pursuance of the written instructions given to him by Dhirajba. The purchasers have taken further defence that plaintiff No.1 could not have been granted heirship certificate. They are purchasers of the land in dispute under legal and valid sale deeds; and they are in actual physical possession of the land from the date of sale deed. It is further stated that on the basis of the sale deeds of the land, these lands have been mutated in the revenue records in their favour. Lastly they have come up with the case that they are bona fide purchasers of the suit land.

4. On the basis of the pleadings of the parties, the learned trial court framed necessary issues in the suit. All the four suits were ordered to be consolidated and evidence of the parties were recorded in regular civil suit No.8/72. After considering the evidence of the parties, the learned trial court, under its common judgment and order dated 31st March, 1978 dismissed the suits of the plaintiffs for recovery of possession of the suit property as well as for declaration that the sale deeds executed in favour of the defendants are illegal and inoperative.

5. The plaintiffs preferred first appeals against the judgment and order of the trial court. All those first appeals were dismissed by the learned Assistant Jammager by a common judgment and order dated 18th June, 1980. Hence these four second appeals before this court.

6. While admitting these second appeals, this court has framed the following substantial questions of law as arising therein:

"(a) Whether the learned Assistant Judge committed a substantial error of law in applying Section 41 of the Transfer of Property Act to the fact of the present case?

(b) Whether the learned Assistant Judge committed a substantial error of law in holding that the sale-deeds were executed in favour of the first respondent by the second respondent was not illegal and void and that the same was otherwise

ratified by the deceased Dhirajba during her life time ?

(c) Whether the learned Assistant Judge was justified in permitting the first respondent to raise the plea of ratification of the transaction of sale even though the same was not pleaded especially in the written statement by the first respondent ?

(d) Whether the learned Assistant Judge committed a substantial error of law in holding that the deceased Dhirajba had impliedly ratified the action of the second respondent, who was given a limited authority of management and who had unauthorisedly sold away the land to the first respondent ?

(e) Whether the learned Judge has committed a substantial error of law in holding that the first respondent was bona fide purchaser for value without notice in the circumstances of present case ? "

7. Learned counsel for the appellants contended that they are heirs of deceased Dhirajba and that right has been recognized by the competent court by granting heirship certificate of the estate of the said lady. The sale deeds which were executed by defendant No.2 of the property of the said lady under the alleged power of attorney were inoperative and illegal; on the basis of which no right, title or interest whatsoever has been passed over to the purchasers, and the courts below have committed serious illegality in not declaring the same to be inoperative and not granting the consequent relief of putting the plaintiffs in possession thereof.

8. Lastly it is contended that the power of attorney of the lady at Exh.178 did authorise defendant No.2 Chandrasinhji Harisinhji Jadeja to manage the agricultural lands. This power of attorney nowhere granted any authority to defendant No.2 to sell the property or any authority to tender the documents for registration before the Sub Registrar. Whatever defence has been taken of the rectification of the illegal and unauthorised action of the power of attorney holder can hardly be of any substance as it is not a legal rectification. The writer of the letter was not examined. Carrying this contention further learned counsel for the appellants contended that in the written

statement also defendant No.2 has not pleaded any rectification of his action. Replying to this contention of ratification by the lady, learned counsel for the respondents on the other hand contended that both the courts have concurrently held that the action of defendant No.2 to execute the sale deeds in favour of the purchasers has been rectified by the lady, and whatever illegality or invalidity alleged in the execution of the sale deed of the suit property stood rectified. This is a question of fact on which both the courts below have recorded concurrent findings against the plaintiffs appellants. This court sitting in second appeal may not interfere with the findings of facts recorded by the lower courts.

9. Lastly it is contended that the suits have been filed much after the sale deeds were executed. It is submitted that the lady expired on 24th September, 1962. Heirship certificate was granted in favour of the plaintiffs in the year 1964. But the plaintiffs have not taken any action to file the civil suits immediately after the death of the lady or grant of heirship certificate. The civil suits were filed on 21st January, 1972, i.e. eight years after grant of heirship certificate. It has further been contended that the plaintiffs themselves have purchased some property from that lady and they were aware of this fact long back, but still have chosen not to file any suit.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The facts have come on record, on which there is no dispute between the parties; (i) The plaintiffs applied for succession certificate vide application No.13 of 1963 before the Civil Judge (Senior Division), Jamnagar, at the first instance, and thereafter before the District Judge vide C.M.A.No. 29 of 1964; (ii) The case of the plaintiffs is that after filing of the said application they came to know about unauthorised sale of the disputed land in four suit by defendant No.2 to the purchasers defendants No.1 in these suits; (iii) Notice has been issued by the plaintiffs to defendant No.2 on 6-12-1963 complaining of this unauthorised action.

11. From these undisputed facts, it is no more in dispute that in the year 1963 the plaintiffs had come to know about these sale deeds. The plaintiffs had also known that these sale deeds are illegal, inoperative and invalid as per their case and had sent notice to defendant No.2 in this regard on 6th December, 1963. The suits have been filed in January, 1972 i.e. eight years

after giving the notice. If we go by the date of sale deeds, the suits have been filed twelve years thereafter. It is not in dispute that four sale deeds are of 23rd January, 1960, 22nd January, 1960 and 4th April, 1960. It is understandable that till the old lady expired the plaintiffs may not have any right, title or interest on the suit property. But after her death the delay which is there on the part of the plaintiffs assumes importance in filing of the suits. Be that as it may.

12. The plaintiffs have not disputed the fact that defendant No.2 was given the power of attorney by the lady in respect of the disputed property. The dispute hinges on the point that under the power of attorney defendant No.2 was conferred the right to manage the property and he was not authorised or empowered or otherwise given any power to sell the land of the lady. I do not consider it necessary to go on examining the question whether the power of attorney authorised, empowered or otherwise conferred any right to sell the land upon defendant No.2. But on the basis of the evidence of the parties which has come on record, both the courts below have accepted the fact that this action of defendant No.2 to sell the property in dispute has been rectified by the lady during her life time. I find sufficient merits in the contention of the learned counsel for the respondents that the question whether the lady has ratified the action of defendant No.2 to sell her land to defendant No.1 is a question of fact and on appreciation of evidence both the courts concurrently recorded finding on this question against the plaintiffs. Ordinarily, this court sitting in second appeal may not interfere with the concurrent finding of facts recorded by the Courts below howsoever erroneous the same may be on the question of law or on the question of facts. In this case defendant No.2 has been examined and he has produced the document and therefrom the courts have recorded the finding of fact that rectification of the action has been made by the lady. One of the important fact that has been noticed by the courts below is that sufficient evidence has come on record that the sale consideration of the disputed lands has been received by the lady. I find nothing wrong in the approach of the courts below in drawing inference of the rectification of the transactions by receiving the sale consideration by the lady.

13. The plaintiffs have tried to raise contention before the trial court and the first appellate court that there are certain suspicious surrounding circumstances to these documents on rectification of sale, but the first

appellate court has rightly observed that the lady was not a purdanasin lady and it is difficult to believe in the facts of the case, where the plaintiffs themselves purchased one piece of land from that lady, that she was under any undue influence of defendant No.2. Be that as it may. Even if on the basis of the same set of evidence two vies are possible, then too the view which has been taken by the lower court ordinarily should not be interfered by this court in second appeal. It is a case where only after death of the lady, being near relation the plaintiffs have tried to take whole of her property including the disputed lands and attempt has been made in this respect but it was restricted only to giving of notice. For more than seven years no action has been taken. Silence of the plaintiffs for this long period of seven to eight years in such matters is also serious. Whatever it is, from this necessary inference can be drawn that they were satisfied with this sale deed.

14. The trial court as well as the first appellate court have rightly observed that defendant No.1 in all these civil suits are bona fide purchasers of the land. It is not the case of the plaintiffs that they were ever made known of the fact that defendant No.2 has no power to sell this land. Even if it is assumed that the power of attorney may not have contained any authorisation in favour of defendant No.2 to sell the property, but nevertheless it authorised defendant No.2 to manage the properties. In view of this factual aspect, defendants No.1 - the purchasers - have not acted unfairly or with any motives to enter in dealing of sale of the disputed land with him. In view of these facts, there is all the possibility and necessary material to believe that defendant No.2 had power to sell the property on behalf of the lady. Moreover, when the sale consideration has been received by the lady, it becomes apparently clear that respondent No.2 cannot be considered to be with no authority or power of whatsoever nature to enter into such transactions. Whatever lacuna was there in exercise of this power in him, it stood ratified by the owner of the property to which no exception can be taken. Taking into consideration totality of the facts of this case, and particularly the conduct of the plaintiffs in not taking immediate action after giving notice and grant of heirship certificate by the competent court, as well as the fact that the sale deeds of the lands indispute were executed in 1960 and the defendant No.1 is in possession thereof for last 38 years, and further that the plaintiffs themselves have purchased other piece of land from the lady, no interference is called for with the judgments of the courts below.

13. In the result all these four appeals fail and the same are dismissed. Interim relief granted, if any, by this court stands vacated. No order as to costs.

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